THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16024 OF 2006

ORAL ORDER:

This writ petition is filed seeking a mandamus directing the respondents to release the vehicle belonging to the petitioner bearing No.AAP 1681, forth with.

It is not in dispute that the said vehicle was involved in an offence punishable under Section 34(a) of the A.P. Excise Act, 1968 (for short "the Act"). Pursuant thereto, criminal proceedings were initiated against the petitioner. Initially, though the petitioner was convicted by the Judicial Magistrate of First class (Excise and Prohibition), Srikakulam, by order dated 17.2.2003 in C.C.No.80 of 1999, on appeal, the said conviction was set aside by the learned II Additional District & Sessions Judge, Srikakulam. The appellate Court held that the order of the learned Magistrate in C.C.No.80 of 1999 directing confiscation of the vehicle involved in the offence was without jurisdiction. However, the appellate Court upheld the direction of the learned Magistrate that the vehicle in question, shall be produced before the Deputy Commissioner to proceed further according to law. In pursuance thereof, the vehicle in question, was handed over to the 2nd respondent on 16.2.2005. Thereafter, the petitioner made an application before the 1st respondent – Deputy Commissioner of Prohibition & Excise, for release of the vehicle. The said application was dismissed by order dated 29.3.2005. Thereafter, the 1st respondent issued show cause notice dated 22.5.2006 calling upon the petitioner to explain as to why the said vehicle should not be confiscated under Section 46-A of the Act read with Section 13-A of the A.P. Prohibition Act, 1995. Though the petitioner submitted his explanation on 14.6.2006, the 1st respondent failed to consider the same and no orders have been passed so far. Aggrieved by the said action of the 1st respondent, this writ petition is filed contending *inter*

alia, that in view of the Judgment in the criminal Appeal, the 1st respondent has no jurisdiction to confiscate the vehicle. It is also contended that the action of the 1st respondent in withholding the vehicle is arbitrary and illegal and, accordingly, a direction is sought to release the vehicle forthwith.

As per Section 45 of the Act, whenever any offence has been committed, which is punishable under the Act, the intoxicant as well as the vehicle or other conveyance used for carrying the same shall be liable to confiscation. Section 46-D of the Act further makes it clear that the order of confiscation shall not prevent from initiation of criminal proceedings against the accused under the Act and that the result of criminal proceedings either acquittal or conviction or otherwise under the provisions of the Act, will have no bearing on the order of confiscation passed under the Act.

In the light of the statutory provisions, the mere fact that the criminal proceedings against the petitioner ended in acquittal by virtue of the Judgment of the appellate Court is not a bar to proceed with the confiscation proceedings under Section 46 of the Act. Since the 1st respondent has already initiated such proceedings and a show cause notice has been issued, interference by this Court at this stage is not warranted.

In the circumstances, I deem it appropriate to dispose of the writ petition with a direction to the 1st respondent to complete the enquiry and pass appropriate order in accordance with law, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. In the meanwhile, it is open to the petitioner to make a request for interim custody of the vehicle, and if such an application is made, the same shall be considered and appropriate orders be passed in accordance with law. No costs.

_____

(G. ROHINI, J.)

3rd August, 2006.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16024 OF 2006

3rd August, 2006.

Between:

Locanadham Sahu. .. Petitioner.

And

The Deputy Commissioner,
Prohibition & Excise department,

Srikakulam and another. .. Respondents.